and subject to the availability of space and conduit."[51] What Verizon-MA omits, however, is that because the D.T.E. is still reviewing its CRTEE tariff, the terms and conditions included in this tariff are incomplete and not yet in effect; therefore, Verizon-MA cannot be found to be currently providing collocation as required by the Commission's *UNE Remand Order*..

Furthermore, as ALTS members have explained, there are several terms and conditions that require clarification and correction before this tariffed offering can be considered evidence of Verizon-MA's compliance with its 271 obligations.[52] For example, before Verizon-MA can be considered to have satisfied this obligation, it must revise its definition of Remote Terminal Equipment Enclosures ("RTEEs"). Verizon-MA limits the types of enclosures at which it will provide remote terminal collocation, by defining RTEEs as "controlled environmental vaults ("CEVs"), huts, cabinets, and remote terminals in buildings not owned by the Telephone Company."[53] By adding the term "in buildings" Verizon-MA restricts the types of enclosures subject to its CRTEE tariff by excluding manholes and other non-building structures where remote terminal equipment is often enclosed. In addition, "huts" and "cabinets" are generally not in buildings, but are located in the field.

These are serious concerns with Verizon's CRTEE tariff. Before the Commission approves Verizon-MA's application for 271 approval, Verizon must fully implement an appropriate CRTEE tariff so that Massachusetts' remote terminal collocation offerings are consistent with the *UNE Remand Order*.

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51 *Id.*

52 See Comments of Rhythms Links, Inc. and Covad Communications Company on Section 271 Compliance Filings of Bell Atlantic Massachusetts at 17-18 (July 18, 2000).

53 Section 11.1.1.A.2.

c. Verizon's Collocation Power Charges are Inappropriate

Verizon-MA's policy on power charges for collocation, while consistent with its New York offering, is entirely inconsistent with industry standards and with other ILEC practices.[54] This is but one example of why parity with New York should not be sufficient for Verizon-MA's 271 approval.[55]

Power resources are a necessary element for the function of a CLEC's collocated equipment, whether caged or cageless. The amount of amps a CLEC needs to power its equipment is listed in Verizon's Federal and State Tariffs. It appears, however, that Verizon charges CLECs for amps that CLECs do not order and do not use, regardless of whether the equipment is for a caged or cageless arrangement. In Massachusetts, when a CLEC orders cageless collocation and requests 40 amps of power, Verizon "fuses," the requested 40 amps of power to 60 amps of power.[56] Verizon then charges the CLEC for 60 amps on both the A and B feeds. Verizon's practice in this regard is different from most if not all other ILECs – while other ILECs may make available more power than the CLEC either requested or can use, those other ILECs will charge only for the 40 amps that were requested and used by the CLEC, just as a power company would.[57] For example, at a residence, the fused capacity may be 60 amps, but if that household uses only 40 amps, it will only be charged for the 40 amps used, regardless of the fuse capacity. Thus, in Massachusetts, instead of paying for the 40 amps that CLECs request (and require, because their collocated equipment can handle no more than 40 amps), Verizon

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54 *See* Williams Affidavit ¶¶ 11-20; *See* Exhibit A, Declaration of Theresa M. Landers ¶ 16-17.

55 Neither the New York Commission nor the Massachusetts Department has ever addressed Verizon's practice of charging for redundant power.

56 Williams Affidavit ¶¶ 11-20.

57 *See id.* ¶¶ 11-16.

charges for the 60 amps that it fuses. While Verizon has the option of fusing at more than what CLECs have ordered, CLECs should not have to pay for the extra fusing. Rather, CLECs should only be charged for what they order and use. Verizon's practice is unjustifiable and results in substantial overcharges that competitors must bear. Verizon's practice is inconsistent with the D.T.E.'s statements and Verizon's representations that power charges "charge collocators for power according to their specific amperage requirement" and that "the level of power demanded is determined by the collocator based on the equipment that collocator decides to put in the cage...." [58]

This overcharge is even greater when one takes into account the redundancies that are required to protect against system outages. Regardless of whether a CLEC requires 40 amps, it is fused 60 amps on two separate tracks or "feeds" – an "A" feed and a "B" feed – to provide for redundancy in the case of a power failure. The ALTS Coalition does not disagree with the need for these redundant feeds, but CLECs should not be charged for power that they do not use. It is Verizon's policy to charge CLECs for the 60 amps that are fused (*i.e.*, available) on both the "A" feed and the "B" feed. As a result, CLECs are charged for 120 amps of power when they only require – and can only use – 40 amps of power. Between charging for fused power versus ordered power, and then charging for fused power on the redundant feed, Verizon-MA's power collocation charges are unreasonably bloated.[59]

While Verizon-MA may assert that when it fuses 120 amps of power, CLECs conceivably could use that amount of power and therefore it should be able to recover its it total potential power costs, this argument is a red herring. Verizon-MA should not be able to recoup

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[58] *Consolidated Arbitrations, D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Phase 4-G Order at 18(June 11, 1998).*

the costs for power that it is not in fact provisioning for CLEC use. On September 14, 2000, ALTS sent a letter to Verizon asking it to justify the cost differential between the ordered amps and the amps billed to CLECs.[60] To date, Verizon has not provided a response to ALTS' request for an explanation. Verizon-MA's practice of overcharging CLECs for power is contrary to industry standard practice and harms CLECs by forcing them to provide higher cost services. The ALTS Coalition submits that Verizon-MA is not in compliance with Section 271 because of this anticompetitive billing practice.

IV. CHECKLIST ITEM (II) – VERIZON DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO ALL UNES

A. Verizon-MA does not provide non-discriminatory access to OSS in violation of checklist item (ii).

1. The Post 271-experience in New York Demonstrates the inadequacy of Verizon's OSS.

In the *Local Competition First Report and Order*, the FCC concluded that incumbent LECs have an obligation under Section 251(c)(3) to provide nondiscriminatory access to the ILEC's OSS. In its *SBC-Texas Order*, this Commission again pronounced that, "the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well.[61] Thus, any failure to provide nondiscriminatory access to OSS means that Verizon has failed to comply with checklist item (ii).

(...continued)

59 Williams Affidavit ¶ 20.

60 *See* Exhibit C, Letter from Kimberly M. Kirby, Vice President, State Affairs for ALTS to Tom Dreyer, Directory of Account Management – CAP/CLEC dated September 14, 2000.

61 *SBC-Texas Order* ¶ 91.

Verizon-MA states that it provides CLECs with access to various checklist items through substantially the same OSS and interfaces that it uses in New York.[62] Specifically, Verizon comments that, "the OSS used in Massachusetts and New York are in most instances carbon copies of one another – that is, while they are physically separate systems, they are functionally identical."[63] Verizon adds that it, "provides the same pre-ordering, ordering, and maintenance and repair interfaces to access the underlying OSS in both states."[64] The fact that Verizon's Massachusetts and New York OSS are essentially the same, however, should not provide the Commission with any level of comfort. As this Commission is aware, after its 271 approval in New York, Verizon's woeful processing of orders – including mistakes, delays and lost orders – have resulted in severe harm to the New York local market. Verizon's OSS, with their outdated software, indecipherable manuals and insufferable delays, have strained the CLECs' relationships with their customers. As demonstrated by the massive fines Verizon is paying to competitors in New York, and to this Commission, Verizon's OSS are designed to fail.[65] Verizon continues to manually process orders, fails to provide its staff with proper training, and routinely misses provisioning deadlines. As this Commission is aware, since Verizon has gained entry into the in-region interexchange market in New York, both the New York Commission and this Commission have raised the initial remedy cap under the New York PAP, which penalizes Verizon-NY for noncompliance with its approval conditions, by $61 million or 23%, in an effort to offset Verizon-NY's abysmal and deteriorating performance.

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62 Application at 43, McLean/Wierzbicki Decl. ¶ 8.

63 *Id.*, McLean/Wierzbicki Decl. ¶ 8.

64 *Id.*, McLean/Wierzbicki Decl. ¶¶ 8, 18, 39, 82.

65 *See*, Order Directing Market Adjustments and Amending Performance Assurance Plan, New York Public Service Commission Case 00-C-0009, Case 99-C-0949 (March 23, 2000); *See generally, Verizon-New York Order.*

There is simply no reason to believe that Verizon will cease discriminating against competitors, as it is in New York, by routinely mishandling orders and destroying customer confidence in CLECs. Although Verizon has downplayed these incidents in its Application, and the D.T.E. has minimized them in its PAP decision as past problems that have been fixed, ALTS members' experiences as well as Verizon's prove otherwise.

Verizon is required to provide performance information to the Commission as a condition of the Bell Atlantic-NYNEX merger. The graphs this Commission has released that have been developed from that data unambiguously demonstrate that Verizon's OSS are not ready for prime time. Specifically, the FCC-produced graphs of data depicting Verizon's performance over the 34 months between September 1997 and June 2000 demonstrate that Verizon's provisioning and maintenance of UNEs, resale, and "specials" have not only failed to improve, but actually significantly *deteriorated* over time. For example, Verizon's provisioning of resale POTS–no dispatch has apparently steadily improved for Verizon customers over the 36 month period, while its performance for CLECs has remained significantly the same.[66] With respect to provisioning of UNEs, it appears that Verizon's provisioning ability has also deteriorated for CLECs in Massachusetts, while again, improving for Verizon and its customers.[67] The FCC's charts demonstrate the same disturbing facts with respect to Verizon's ability to provide maintenance and repair at parity with what it provides to itself. In Massachusetts, Verizon's mean time to repair for its own retail services is significantly lower than for CLEC UNEs.[68]

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66 *See* Exhibit B, Chart 1.

67 *See* Exhibit B. Charts 2 and 3.

68 *See* Exhibit B, Chart 4.

Accordingly, the problems that Verizon is experiencing are not fixed, as demonstrated by Verizon's own data.

2. The Observations Of KPMG Substantiate That Verizon's OSS Systems Are Woefully Inadequate and Incapable of Handling CLEC Orders

Over 110 KPMG observations reveal the appalling performance of Verizon-MA's legacy OSS systems. The observations clearly document that Verizon continues to erroneously record orders by hand, improperly train employees, incorrectly bill CLECs, and provide CLECs with inaccurate and false end-user information. Where Verizon does use electronic ordering, its software is so flawed that CLECs cannot even submit the initial order, much less graduate to Verizon's regimen of missed installations. These observations are not the unsupported "claims" and "anecdotes" of CLECs, but rather belong to an independent party, with no financial stake in the outcome.[69]

KPMG's observations show that Verizon's ordering systems are set up to fail at each and every level. First, determining how to correctly place an order is nearly impossible. *See, e.g.*, Observation Report #19 (stating "information and procedures that have been stated in the CLEC handbook are inconsistent with actual practice and can mislead a CLEC or delay a CLEC's ability to conduct business"). Second, electronic orders are routinely rejected. *See, e.g.*, Observation Report #11 ("stating that "ISDN resale orders cannot be completed without providing a field stated as being optional"). Third, Verizon relies on manual transcription, which continually leads to errors. *See, e.g.*, Observation Report #1 ("This manual transcription could lead to future errors of unpredictable magnitude."). Last, in the rare event Verizon "fixes" its

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[69] Application at 47.

interfaces, it employs the curious tactic of not informing CLECs. *See, e.g.*, Observation Report #94 (stating "KPMG did not receive timely and complete notification of changes").

Verizon claims that its OSS are able to handle large commercial volumes.[70] KPMG's observations, however, clearly demonstrate that the glitches in Verizon's ordering software, in addition to the monumentally large handbook explaining the software, effectively prevents CLECs from placing, tracking, and completing orders. KPMG even recognizes that when Verizon has attempted to change its system, it does not inform CLECs of the changes, nor does it re-train its own staff. In fact, the D.T.E. even refused to compel high-level commercial volume testing, as it had originally required.

Any perceived compliance by Verizon may be only a temporary phenomenon of Verizon's diversion of resources from other endeavors. As demonstrated in New York, once Verizon received 271 approval, subsequent CLEC orders were mishandled, lost, and "backlogged." The increase in CLEC orders in New York, combined with Verizon's untested interfaces, demonstrates that Verizon's dated OSS systems are incapable of processing CLEC orders. Because Verizon's Massachusetts OSS systems are provided within the same organization, the post-271 performance of Verizon in New York suggests Verizon simply is not currently capable of sustaining any perceived compliance with the checklist. This is even more troubling since KPMG did not test Verizon-MA's ability to process commercial volumes of traffic.

The New York experience shows that, regardless of how much Verizon strains to improve its performance under its current processing systems, massive failure will result once competition increases beyond the current insignificant level in Massachusetts. The Commission

and the D.T.E. will then be faced with protracted monitoring proceedings that can never hope to repair lost consumer confidence in CLECs. Eventually, CLECs will be forced to resort to costly and time-consuming arbitration/complaint processes, further delaying and impairing the development of local competition.

Given all the system changes to its OSS since the KPMG testing, it simply cannot be said that Verizon has demonstrated that it provides CLECs with non-discriminatory access to its OSS. The Commission should deny Verizon's Application, and should encourage Verizon to test these systems thoroughly and to establish a collaborative process whereby CLECs and Verizon can work together to fix any ordering difficulties in the software and the processes together. Only through such testing will Verizon be able to finally demonstrate that it has complied with the requirement that it provide non-discriminatory access to its OSS as required by the Act, and will it be possible for Verizon to gain entry into the in-region interLATA interexchange market in Massachusetts.

3. Verizon does not provide nondiscriminatory access to pre-order loop qualification information

Section 271 requires a BOC to provide nondiscriminatory unbundled access to OSS, including pre-ordering and ordering functions supported by a BOC's databases and information.[71] Based on its record of providing access to its pre-ordering OSS, Verizon has not satisfied checklist item (ii).[72] "Pre-ordering information" specifically includes "loop qualification information," which includes "the composition of the loop material..., location and type of any

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(...continued)

[70] Application at 44, 45, 47.

[71] 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.319(g).

[72] *See* Exhibit A, Declaration of B. Kelly Kiser ¶ 8-14 and Declaration of Steve Melanson ¶ 7-10.

electronics or any other equipment on the loop..., the loop length..., the wire gauge(s) of the loop; and the electrical parameters of the loop, [all of] which may determine the suitability of the loop for various technologies."[73]

Verizon is required to "provide ... access to the same detailed information about the loop that is available to [it], so that [a CLEC] can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the [CLEC] intends to install.... [A]t a minimum, [Verizon] must provide [CLECs] the same underlying information that [Verizon] has in any of its own databases or other internal records," including the information listed in the definition of "pre-ordering and ordering."[74] However, Verizon discriminates against CLECs by refusing to make its LFACS database directly available to CLECs although it admits that LFACS contains substantial information CLECs need to determine whether an individual loop is qualified.[75] Verizon has stated that "[t]he loop qualification database [it makes available to CLECs] is distinguishable from the LFACS database,"[76] thereby admitting that it does not provides the same information to CLECs as it does to its retail operations. This just states the obvious fact that there are two databases. Verizon must make available to CLECs the information in LFACS in the same time and manner as that information is available to Verizon

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73 47 C.F.R. § 51.

74 *UNE Remand Order* ¶ 427.

75 *See* Verizon Application, Appendix E, *Record of Massachusetts DTE Docket No. 98-57 (Interconnection Tariff Proceeding),* Vol. 24, Tab 1,Transcript of Hearing Held August 2, 2000 (Mr. White), p. 493; *see also id.* at Vol. 19, Tab 1, BA-MA's Responses to Rhythms/Covad Information Requests (submitted 6/22/00); *see also* Ex. 29, BA-MA Reply to RL/CVD 1-33 (listing information contained in LFACS, including location and type of electronics, location of bridged taps, spare pair availability, cable and pair identification, and other information).

76 *See* Verizon Application, Appendix K, *Supplemental Materials from Appendices B through H,* Vol. 6, Tab 1, Supplement to Appendix E (submitted September 1, 2000) (DTE 98-57 Phase III, Verizon Reply Brief), p. 17 n.2.

retail operations. It could do so by either making LFACS, or the information in LFACS, available to CLECs; however, it refuses to do either.[77]

Verizon requires CLECs ordering a DSL loop to qualify that loop before submitting an order to determine if it is capable of supporting the technologies that the CLEC plans to use.[78] However, Verizon's loop qualification database ("LQD") frequently provides responses that are inaccurate.[79] Digital Broadband tested the error messages received through Verizon's LQD by using "manual" loop ordering procedures when the LQD indicated the loop was not qualified or Digital Broadband believed the LQD message was incorrect.[80] During manual loop ordering, Verizon accesses it mechanized LFACS database.[81] "Through July of this year, Digital Broadband requested manual qualification 533 times. Of those 533 instances, Digital Broadband later was able to deploy service on 225 (42%) of the loops, meaning that close to 50% of the LQD results were what are called 'false negatives.'"[82] Additionally, "between January and July 2000, 14% of all of Digital Broadband's qualified loop orders were false positives."[83]

Provision of such inaccurate information significantly delays or prevents CLECs from providing service to their customers. Verizon's stark refusal to allow access to the automated LFACS, especially when that information is accessed by Verizon during manual order

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77 *See* Exhibit A, Declaration of B. Kelly Kiser ¶ 12.

78 *See* Exhibit A, Declaration of Steve Melanson ¶ 7.

79 *See id.* ¶ 8.

80 *See id.* ¶¶ 8-10.

81 *See* Exhibit A, Declaration of B. Kelly Kiser ¶ 11.

82 *See* Exhibit A, Declaration of Steve Melanson ¶ 9.

83 *Id.* ¶ 10.

processing, clearly violates the Act and the Commission's rules. Thus, Verizon's loop qualification access performance and its denial of LFACS warrant rejection of Verizon-MA's 271 Application.

4. Verizon routinely misses Firm Order Commitment (FOC) dates

In evaluating whether Verizon's OSS complies with the section 271 competitive checklist, the Commission must examine whether Verizon provides competitors with nondiscriminatory access to due dates, often referred to as a firm order commitment ("FOC") date. FOCs and jeopardy notices allow CLECs to monitor the status of their orders and to track their orders for their own and their customers' records.

As the Commission has recognized, owing to their use as barometers of performance, FOC and jeopardy/rejection notices play a critical role in a CLEC's ability to keep its customer apprised of installation dates (or changes thereto) and to modify a customer's order prior to installation. Further, the Commission also has recognized that the inability to provide CLECs with timely FOCs is a significant indication of whether a BOC's OSS is capable of providing competitors with parity performance.

The assertions in Verizon's Application belie its actual performance. While Verizon might be able to claim it is meeting FOC dates, as several ALTS members have reported, Verizon provides, at best, FOC dates months away. In one instance, XO Communications placed an order on June 23, only to receive a FOC date of November 27. Similarly, Verizon-MA has provided Digital Broadband with FOC dates as late as December 2001 for DS-3 interoffice facilities.[84] At least 14 of Digital Broadband's DS-3 orders placed in June and July 2000 received

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[84] *See* Exhibit A, Declaration of Theresa M. Landers ¶ 12.

FOC dates between six and fifteen months from the order date.[85] Furthermore, Verizon frequently changes its FOC dates, creating delays typically up to three or four months.[86] In one case, Verizon changed the FOC date from September 6, 2000 to June 10, 2001.[87] Verizon's poor performance has a substantial detrimental impact on CLECs' ability to provide timely and accurate information to their customers and often leads to order cancellation.

Despite Verizon's assertion that its "on-time completion rate for dedicated transport was 97.3 % on average,"[88] this is not consistent with CLEC experiences and data. For example, between April 15 and September 29, 2000, Digital Broadband placed 88 orders for DS-3 interoffice facilities in Massachusetts, yet Verizon completed less than 25% (21 of 88) of those orders by the FOC date,[89] nowhere near the 97.3% it claims. Furthermore, the quality of DS-3s that Verizon provisioned is poor – of all Digital Broadband's DS-3 "orders provisioned since April 15, 2000 in Massachusetts, only four worked properly on the turnover date," and Digital Broadband has been required to make multiple dispatches on nine orders before it received a fully functional DS-3connection.[90] The experiences of Digital Broadband are similar to those of other CLECs dealing with Verizon in Massachusetts and elsewhere in its region.

B. Verizon Does Not Provide Nondiscriminatory Access To Unbundled Network Elements including Local Loops

Section 271(c)(2)(B)(iv) of the Act requires a section 271 applicant to provide, or offer to provide, access to "[l]ocal loop transmission from the central office to the customer's premises,

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85 *Id.*

86 *Id.* ¶ 13.

87 *Id.*

88 Application at 30.

89 *See* Exhibit A, Declaration of Theresa M. Landers ¶ 12.

90 *See id.* ¶ 14.

unbundled from local switching or other services."[91] To satisfy the nondiscrimination requirement under checklist item (iv), a BOC must demonstrate that it can efficiently furnish unbundled loops to competing carriers within a reasonable timeframe, with a minimum level of service disruption, and at the same level of service quality as it provides to its own retail customers.[92] Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business.

Pursuant to section 251(c)(3) BOCs have a duty to provide CLECs access to network elements on an unbundled basis.[93] Section 251 requires BOCs to provide unbundled access to a network element where lack of access impairs the ability of the requesting carrier to provide the services that it seeks to offer.[94] Consistent with this requirement, the Commission has determined that local loops are included in the minimum list of unbundled network elements that a BOC must provide, *e.g.*, 2-wire voice grade analog loops, 4-wire voice-grade analog loops, and 2-wire and 4-wire digital loops.[95] Pursuant to the Commission's Order on Verizon's New York Application, BOCs must offer the high frequency portion of the local loop as a separate unbundled network element.[96] As the Commission has found, spectrum unbundling is crucial for the deployment of broadband services to the mass consumer market.[97] Verizon must satisfy

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91 47 U.S.C. § 271(c)(2)(B)(iv).

92 *Verizon-New York Order* ¶279.

93 *See* 47 U.S.C. § 271(c)(2)(B)(ii) and (iv); *UNE Remand Order; Verizon-New York Order,* ¶269.

94 *UNE Remand Order* ¶ 11.

95 *See Local Competition First Report and Order* ¶ 360; *UNE Remand Order* ¶ 3.

96 *Verizon-New York Order* ¶ 268.

97 *UNE Remand Order* ¶ 6.

these minimum requirements for provision of unbundled local loops to satisfy the standards of checklist item (iv).

To satisfy the requirements of nondiscriminatory offering of unbundled network elements, BOCs must deliver the unbundled loop to the competing carrier within a reasonable timeframe and with a minimum of service disruption, and must deliver a loop of the same quality as the loop that the BOC uses to provide service to its own customer.[98] A BOC must also provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested.[99] BOCs must allow requesting CLECs access to all functionalities of a loop, and the CLEC is entitled, at its option, to exclusive use of the entire loop facility.[100] To refuse a CLEC request for a particular loop or conditioning, the BOC must show that conditioning the loop in question will significantly degrade the BOC's voice-band services, and the BOC must show that there is not adjacent or alternative loop that can be conditioned or to which the customer's service can be moved to enable meeting the CLEC request.[101]

Competing carriers must also have nondiscriminatory access to the various functions of the BOC's OSS in order to obtain unbundled loops in a timely and efficient manner.[102] To meet this standard, it should take no longer to obtain and install equipment to condition a loop in response to a CLEC's request than it would take Verizon to procure and install the same

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98 *See,* 47 C.F.R. § 51.313(b); 47 C.F.R. § 51.311(b); *Local Competition First Report and Order* ¶¶ 312-16.

99 *Verizon New York Order* ¶ 271 (citing *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20713 and *Local Competition First Report and Order*, 11 FCC Rcd at 15692).

100 *UNE Remand Order* ¶ 5.

101 *Id.* ¶ 36.

102 *Verizon-New York Order* ¶ 270.

equipment for itself.[103] Last, a BOC must provide cross-connect facilities, for example, between an unbundled loop and a requesting carrier's collocated equipment at prices consistent with section 252(d)(1) and on terms and conditions that are reasonable and nondiscriminatory under section 251(c)(3).[104]

C. Verizon's provision of DSL-capable loops does not comply with the requirement for non-discriminatory access.

The FCC's *Verizon-New York* and *SBC-Texas Orders* made it abundantly clear that, in reviewing subsequent BOC applications, the Commission would consider a BOC's provisioning of DSL-capable loops a critically important test of its compliance with checklist item (iv).[105] The Department of Justice also looked specifically at DSL loop provisioning when reviewing Verizon's New York 271 application.[106] Because the provisioning of xDSL services was not a factual issue in the New York proceeding, but is an important issue that the Commission must now consider for purposes of determining whether Verizon has earned interLATA entry into the Massachusetts long distance market, it is simply not enough for Verizon-MA to assert that it has provided what Verizon-NY provided.

Although Verizon-MA has been on notice for almost a year that it must satisfy the requirements for providing nondiscriminatory access to the high frequency portions of the loop set forth in the *Verizon-New York Order*, the *UNE Remand Order* and the *Line Sharing Order,* nothing in Verizon's conduct over the past year indicates that it will allow competitors a

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103 *UNE Remand Order* ¶ 32.

104 *Verizon-New York Order* ¶ 272 (citing *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20713).

105 *Verizon-New York Order* ¶ 330.

106 The Department found that the data in the record for *Verizon* were insufficient to demonstrate its compliance with the requirement that it provide DSL-capable loops on a nondiscriminatory basis. *Verizon-New York Order* ¶ 328.

meaningful opportunity to compete in the provisioning of DSL-based services. Certainly Verizon's actions during the Tariff 17 proceeding show that Verizon expended far more energy ensuring that its ADSL offering would get to market first – through almost any tactic – than in meeting its CLEC customers' needs. In fact, many of the provisions of Verizon's proposed xDSL tariff have been found by the D.T.E. to run afoul of the *UNE Remand Order* and the *Line Sharing Order*. While the ALTS Coalition is encouraged by the Department's action in disallowing many of the untenable restrictions that pervade Verizon's DSL offering, the fact remains that today, 10 months after the Commission's *UNE Remand* and *Line Sharing Orders*, Verizon cannot demonstrate its compliance with the FCC's requirements. It should be noted that Verizon chose to file its Application while its xDSL tariff was pending at the Massachusetts Department. On September 29, 2000, days following Verizon-MA's filing with the Commission, the Department released its line sharing order, striking down many of the restrictions in Verizon's proposed xDSL tariff as inconsistent with the Commission's prior orders. Verizon has obstinately done its best to severely limit the types of xDSL services that a CLEC can offer. Specifically, Verizon's proposal unreasonably restricts the types of xDSL services a CLEC can offer as well as the lengths of the loops and the transmission speeds of the loops available to CLECs. Moreover, Verizon's subloop unbundling proposal ("USLA") is overly restrictive and contrary to the FCC's Orders. ALTS will discuss each of these issues separately below. Given the rejection of Verizon-MA's tariff filing, its failure to submit a compliance filing acceptable to the D.T.E.[107] and its failure to "fully implement" the Commsssion's and the D.T.E.'s requirements, Verizon-MA has not satisfied this checklist item.

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[107] If past is prologue, Verizon-MA may file a motion for reconsideration, as it did from the D.T.E.'s March 24, 2000 decision involving Tariff 17. That motion was not decided by the D.T.E. until September 7, 2000, (continued...)

1. Verizon's xDSL offering unreasonably and unlawfully restricts the advanced services CLECs can offer to their customers.

The Commission has made it clear that the Act is technology neutral, and therefore, market forces, rather than regulatory distinctions, should drive the advancement of the nation's communications infrastructure. In the Commission's words: "Congress made clear that the 1996 Act is technologically neutral and is designed to ensure competition in all telecommunications markets."[108] Similarly, the Commission has noted that "[it is] mindful that, in order to promote equity and efficiency, [it] should avoid creating regulatory distinctions based purely on technology."[109] Furthermore, the Commission has recently noted that "[t]he incumbent LECs' obligation to provide requesting carriers with fully-functional conditioned loops extends to loops provisioned through remote concentration devices such as digital loop carriers (DLC)."[110] Moreover, the Commission has stated that in order to demonstrate compliance with its obligation to provide nondiscriminatory access to unbundled loops, the BOC "must provide access to any functionality of the loop requested by the competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested."[111]

(...continued)

thus depriving some CLECs of the benefits of that tariff. Similar delays would preclude CLECs from obtaining the xDSL and line sharing arrangements ordered by the D.T.E. and eliminate any claim that Verizon-MA has fully implemented these services.

108 *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking* ¶ 11 (rel. Mar. 31, 1999) ("*Advanced Telecom Order*").

109 Federal-State Joint Board on Universal Service, *Report to Congress*, CC Docket No. 96-45, ¶ 98 (rel. Apr. 10, 1998).

110 *Advanced Telecom Order* ¶ 54.

111 *See BellSouth Louisiana II Section 271 Order* ¶ 187.

As the Massachusetts D.T.E. recently found, Verizon-MA's xDSL offering does not live up to the standards articulated by this Commission. First, the Verizon proposal limits the type of services that can be provided over advanced services loops to ADSL and HDSL.[112] This limitation is unacceptable and is in violation of FCC rules. In its *Line Sharing Order* the FCC found that ILECs are required to provide "unbundled access to the high frequency portion of the loop to any carrier that seeks to deploy any version of xDSL that is presumed to be acceptable for shared-line deployment in accordance with our rules."[113] The FCC determined that an advanced services loop will be deemed to be acceptable for deployment if the technology (1) complies with existing industry standards; (2) is approved by an industry standards body, the FCC, or any state commission; or (3) has been successfully deployed by any carrier without significantly degrading the performance of other services.[114] Verizon's limited xDSL offering stands in blatant violation of this Commission's rules. Specifically, as the Massachusetts D.T.E. determined, "Part A, Section 5.4.1 of Verizon's proposed tariff is inconsistent with the FCC Rules by narrowly defining 'xDSL links' as providing 'transmission technology capable of supporting either [ADSL] or [HDSL]"[115] As such, the D.T.E. ordered Verizon to modify its xDSL offering to, "indicate that a requesting telecommunications carrier may deploy any xDSL-based service that conforms to the FCC's criteria set forth in Rule § 51.230."[116] Accordingly, as it stands today, Verizon has yet to offer xDSL that is in compliance with the Commission's

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112 D.T.E. MA Tariff No. 17, Part B Section 5.4.1.A.

113 *Line Sharing Order* ¶ 71.

114 *Line Sharing Order* ¶ 195 and codified at 47 C.F.R. § 51.230(a).

115 D.T.E. Order in 98-57, Phase III, at 13.

116 D.T.E. 98-57-Phase III, at 14.

Orders, and thus cannot demonstrate that it is providing access to unbundled high capacity loops as required by the Act and this Commission.

2. Verizon's proposal unreasonably and unlawfully restricts the loop lengths that CLECs can use to provide DSL services

In addition to restricting the types of DSL services a CLEC can provide via its tariff proposal, Verizon also unreasonably limits the loop length that CLECs can use to provide xDSL services. Specifically, the Verizon offering limits the length of loops over which CLECs can provide HDSL to 12,000 feet and loops over which CLECs provide ADSL must be restricted to less than 12,000 feet or 18,000 feet depending on the offering. These limitations are completely arbitrary and are in violation of the FCC's rules, which prohibit LECs from restricting the types of services that CLECs provide through the use of an unbundled loop.[117]

3. Verizon's proposal unreasonably and unlawfully restricts the speeds of CLEC DSL offerings.

More troubling perhaps, are the restrictions that Verizon's xDSL proposal puts on the speeds of CLEC xDSL offerings. As noted above, Verizon's proposal permits CLECs to only offer two types of xDSL services – ADSL and HDSL. For ADSL, Verizon restricts CLEC offerings to speeds up to 6 Mbps downstream and 640 Kbps upstream.[118] Verizon's own retail offering (Infospeed) offers retail customers speeds up to 7.1 Mbps downstream and 680 Kbps upstream. The anti-competitive and discriminatory effects of these unreasonable restrictions on

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117 *First Report and Order and Fourth Further Notice of Proposed Rulemaking,* In the Matter of Deployment of Wireine Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, ¶ 53 (rel. March 31, 1999) ("Section 251(c)(3) does not limit the types of telecommunications services that competitors may provide over unbundled elements to those offered by the Incumbent LEC.").

118 D.T.E. MA Tariff No 17 §5.4.1.A

CLEC offerings could not be clearer and will significantly hamper CLEC entry into the advanced service marketplace in Massachusetts as well as the choices available to consumers in the Commonwealth.

As noted above, the Massachusetts D.T.E. recently ordered Verizon to remove the restrictions on the types of xDSL capable services CLECs can provide over Verizon's advanced services loops as well as the restrictions on transmission speeds in the tariff. While this is encouraging, the fact is that today, despite 10 months of notice that it would be required to provide xDSL within the parameters set in the Commission's *UNE Remand* and *Line Sharing Orders*, Verizon has obstinately refused to do so. The Commission should not reward Verizon for its blatant refusal to comply with this Commissions rules and should not permit Verizon to provide interLATA interexchange services until it provides a DSL offering that furthers the goals of the Act.

4. Verizon's proposal does not provide for access to loops provisioned via fiber

In addition, the Verizon tariff apparently prevents CLECs from obtaining digital links if Verizon provisions those links using remote concentration devices, such as digital subscriber line access multiplexes ("DSLAMs") and digital loop carriers ("DLCs"). In order to comply with its obligation to provide unbundled loops, Verizon must clarify that it will unbundle digital loops of any length requested by CLECs, regardless of whether they are provided over remote concentration devices. **This is of significant concern since more than 400, 000 (or 8.6%) of**

the loops in Massachusetts are served via DLC and Verizon can be expected to continue deploying DLC facilities.[119]

In its *Line Sharing Order*, this Commission stated that, "incumbent LECs are required to unbundle the high frequency portion of the local loop even where the incumbent LEC's voice customer is served by DLC facilities."[120] Rythms and Covad have explained in detail how DLC can be used to provide providing line shared DSL service over fiber.[121] Even Verizon-MA concedes that it is technically feasible to provide DSL service over DLC.[122] As noted above, the Commission has stated that the Act is technology neutral. The Commission should remind Verizon that it will not tolerate artificial technological distinctions of the type that Verizon has proposed. While the D.T.E. has instructed Verizon to file a tariff that, "would enable CLECs to place, or have Verizon place CLEC-purchased line cards in Verizon's DLC electronics at the RT...and to file a tariff for feeder subloops,"[123] such a tariff proposal does not exist today. Accordingly, before Verizon can gain 271 approval, it must prove that it provides access to high capacity loops fed via DLC, something that it does not do today.

D. Additional Testing is Necessary to That Verizon is Providing Advanced Services Loops on a Non-discriminatory Basis.

As noted above, Verizon-MA is the first BOC that will be required to demonstrate its compliance with the Commission's *Line Sharing* and *UNE Remand Order*s. In its review of Verizon's New York Application, the Commission informed Verizon that it would be required to make a specific showing of compliance for DSL loop issues in its next 271 Application. The

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119 Brief of the Massachusetts Attorney General regarding Verizon-MA's 271 application at 4.

120 *Line Sharing Order*, ¶ 91.

121 See Initial Brief of Rythms Links, Inc., D.T.E. 98-57, Phase III (August 18, 2000) at 40.

122 D.T.E. 98-57, Phase III, Tr. at 418-419.

FCC has stated that to demonstrate checklist compliance regarding DSL loop provisioning, the BOC can either (1) create an advanced services affiliate which would, "use the same processes as competitors to conduct such activities as ordering loops, and pay an equivalent price for facilities and services..."[124] or it could choose to demonstrate, "that it provides non-discriminatory access to xDSL loops in accordance with checklist item four by establishing by a preponderance of the evidence that it provides xDSL-capable loops to competitors in a nondiscriminatory manner."[125]

The FCC further instructed that for any data submitted to demonstrate compliance, it would expect the BOC, "to demonstrate, preferably through the use of state or third-party verified performance data, that it provides xDSL capable loops to competitors either in substantially the same average interval which it provides xDSL service to its retail customers or an interval that offers competing carriers a meaningful opportunity to compete. [126]

While the ALTS Coalition believes that testing conducted by KPMG was in many respects a comprehensive test of Verizon's OSS, two significant flaws with the testing of xDSL make it impossible to determine if Verizon is meeting its obligation to provide CLECs with nondiscrimnatory access to unbundled xDSL loops. First, unlike most of the metrics presented in the final report, KPMG did not independently verify Verizon's ability to provision xDSL loops. Although KPMG's Final Report indicates that it used the New York Carrier-to-Carrier

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(...continued)

123 D.T.E. 98-57, Phase III, Tr. at 80.

124 *Verizon-New York Order* ¶ 332.

125 *Id.* ¶ 334.

126 *Id.* ¶ 335.

guidelines dated February 28, 2000 which contain numerous DSL metrics, verification of Verizon's xDSL performance was somehow overlooked by KPMG.[127]

This is especially troubling since the experience of ALTS members, independent of testing, demonstrates that real problems exist with Verizon-MA's ability to provision xDSL loops. Verizon provisions an unacceptably large number of loops that pass initial cooperative testing but subsequently fail, and loops that do not function even after being installed.[128] For example, during August and September 2000, 19.5% (60 out of 308) of Digital Broadband's DSL loop installations passed the initial remote cooperative testing at time of loop turnover but did not pass subsequent testing when Digital Broadband performed installation at the customer premises.[129] In its Application, Verizon-MA lays blame on CLECs for many of these problems, stating that CLECs "are submitting ... trouble reports within short periods after the loops are installed and after they provide a serial number accepting the loops as working," and that this "suggests that CLECs are accepting loops that are not capable of supporting the services they wish to provide and then submitting 'repair' orders in an effort to force Verizon to rebuild or replace the loop."[130] However, Digital Broadband has found that in many cases the loop no longer passes testing because "the loop parameters have changed between the time of initial testing and installation – for example, there has been a resistive or voltage fault, or some aspect of the loop as initially tested has been altered by Verizon in such a manner that the loop as

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127 Tr. of Technical Session held on August 29, 2000. Vol. 26, pp. 3387-89, MA D.T.E. 99-271.

128 *See* Exhibit A, Declaration of John McMillan ¶ 6.

129 *Id.* ¶ 7.

130 Application at 26.

initially tested no longer is available."[131] Verizon's practices waste valuable CLEC time and resources that must be expended to test, retest, and re-install the loop.

Second, KPMG did not test Verizon-MA's ability to provision line sharing at all. As noted above, Verizon-MA must demonstrate that it has complied with the *Line Sharing Order* as a prerequisite for its ability to obtain 271 authorization. Failure to test its ability to provision line sharing means that it has not met its burden of proof, and has thus not met its obligations that would earn it the privilege of entering the interLATA market in Massachusetts.

E. Verizon fails to offer CLECs adequate access to subloops in violation of the UNE Remand and Line Sharing Orders.

The *UNE Remand Order* makes clear that Verizon must offer CLECs access to subloop network elements at any feasible point.[132] In addition, the *UNE Remand Order* requires Verizon-MA to provide subloop unbundling.[133] "Subloops" are the "portions of the loop that can be accessed at terminals in the incumbent's outside plant."[134] The FCC defined subloop broadly in order to allow "requesting carriers maximum flexibility to interconnect their own facilities" at technically feasible points to "best promote the goals of the Act."[135] Accordingly, Verizon is required to provide access to the subloop elements at any technically feasible point in the loop plant – this includes, but is not limited to, "points near the customer premises, such as the point of interconnection between the drop and the distribution cable, the NID, or the MPOE."[136]

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131 *See* Exhibit A, Declaration of John McMillan ¶ 10.

132 *UNE Remand Order* ¶ 209.

133 *Id.* ¶ 205.

134 *Id* ¶ 206.

135 *Id* ¶ 207.

136 *Id.* ¶ 209.